

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1126 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWANDAS C. PATEL

Versus

PURSHOTTAM MULJIBHAI GANDHI

Appearance:

1. Criminal Appeal No. 1126 of 1992
MR PRANAV G DESAI for Petitioner No. 1
MR JIVANLAL G SHAH for Respondent No. 1-2
MR KC SHAH, APP for Respondent No. 3
-

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/10/2001

JUDGEMENT

1. The appellant, original complainant of Criminal Case No. 3821 of 1987 of the Court of Judicial

Magistrate First Class, Municipal Court, Baroda, has preferred this appeal u/S. 378(4) of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.') challenging judgment and order of acquittal dated 9/5/1991 passed by the Ld. Magistrate in aforesaid case. In the said case respondents nos. 1 and 2 were tried for the alleged commission of offence made punishable u/S. 7 read with section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act').

2. According to the prosecution, appellant who was appointed by the Government of Gujarat as Food Inspector by publishing his appointment in the Government Gazette, was attached to Vadodara Municipal Corporation at the relevant time. On 5/5/1987 while the appellant was on his usual round, he visited a shop of respondents situated at Dayal Bhavan's lane, Rajmahel Road, in the city of Baroda. The shop belonged to respondent no. 1 Parshotamdas Ravajibhai, who was trading in the business of grocery and spices. At the time of appellant's visit respondent no. 2 was present at the shop and he was carrying on the selling activity. The appellant revealed his identity to respondent no.1 and informed him that he had been to the shop for collecting the sample of food article to get it analysed by the Public Analyst. He thereafter summoned one outsider to be a witness and in his presence he repeated the purpose of his visit to the shop. He noted down the same in the panchnama. He also made inquiry about the name of the shop owner and about the shop licence. Respondent no. 2 showed the licence to the appellant in which names of both the respondents appeared. He made a note of this in the panchnama. In the shop just at the entrance a table was placed on which the balance was kept. On the floor, in different tins, chilli powder, corriander powder (Dhaniya) and fenugreek seeds (hereinafter referred to as 'Methidal') were stored. In one tin utensil 15 Kgs. of Methidal was stored and for taking out Methidal from the said tin, one iron utensil (Vatko - Katora) was kept. On inquiry made by the appellant in the presence of the witness, respondent no. 2 stated that he had got the Methidal cleaned in his presence and had kept it ready for sale. The appellant thereafter purchased 600 grams of Methidal from the said tin utensil for getting it analysed by the Public Analyst. He also passed on a written notice to this effect to respondent no.2. The written notice was signed by the appellant as well as by the panch. Signature of respondent no. 2 was obtained on the office copy by the appellant. The said office copy has been produced on record at Exh. 9. The appellant collected

600 grams of Methidal in a polyethylene bag which was clean and moistureless with the aid of spoon. Methidal weighing about 600 grms. was collected by the appellant for getting it analysed by the Public Analyst and paid Rs.10=80 ps. to respondent no.2 for purchasing the aforesaid quantity of Methidal, for which the owner of the shop viz. respondent no. 2 passed on a receipt to the appellant. The said receipt is at Exh. 12. He also gave cash memo to the appellant which is at Exh. 13 on record. The appellant thereafter divided 600 grms. of Methidal in 3 equal parts of 200 grams and filled each part in 3 different glass bottles, which were clean, odour-less and moistureless. The appellant thereafter applied the tin lid on each bottle and tighten them. He also applied his seal on the mouth of the bottle in such a manner that part of the seal came on the top of the bottle and part of the seal covered some glass portion of the bottle. In 6 printed labels he got written by the supervisor the code as well as serial nos., the type of the sample, the name of the vendor as well as his address and type of preservative added for conserving the Methidal. He also put his own signature on the said labels. The appellant pasted one label on each bottle by means of gum. Each bottle was then wrapped in a brown paper and the appellant pasted the ends on the mouth, its bottom and in the middle of the bottle with gum by neatly folding them inwardly. The appellant thereafter pasted on each bottle one label from the remaining 3 labels. The appellant also pasted 3 slips, one each on the 3 bottles, which contained the signature, code and serial no. of Shri R.G. Mehta, Local Health Authority, Vadodara Municipal Corporation after showing them to the witness and the vendor respondent no.2. The slip was pasted around the bottle in such a manner that it covered the lid as well as bottom of the bottle from one side and again going round the bottle and coming on the top of the bottle from the otherside of it. On the slip signatures of the witness as well as respondent no. 2 were obtained and the appellant also signed the same. The appellant thereafter tied the wrapper containing bottles crosswise with twine bringing the knot on the top portion i.e. mouth of the bottle. The appellant got his seals applied by his peon on each bottle, one on the mouth of the bottle and one at the end of the bottle and one each on the two sides of the bottle. The formalities which were carried out during the collection of the sample and thereafter packing and sealing, were noted down in the panchnama. The panchnama is produced on record at Exh. 14. After returning to the office the appellant prepared the memorandum and signed it. He thereafter kept one bottle containing sample and one copy of the memorandum

in the envelop bearing printed address of the Public Analyst. He thereafter closed the envelop by means of gum. He also tide the envelop crosswise by means of twine (wax string) and got it sealed with his own seal. He signed the cover as sender thereof and made necessary note about it in the correspondence register and despatched it by hand delivery to the Public Analyst through his peon. Subsequently he placed one copy of the memorandum as well as seal impression in another cover and closed it by means of gum. The said cover bore address of Public Analyst. The said cover was signed by the appellant as the sender thereof. The said cover was thereafter sent to the Public Analyst separately with his peon after making necessary noting in that regard in the correspondence register. The appellant received a letter acknowledging the receipt of sealed packets. The appellant thereafter put two remaining bottles of samples alongwith copy of memorandum in a cover and closed it by means of gum and tide it crosswise with twine. The outer cover bore the address of Local Health Authority and also the signature of appellant as sender thereof. The said packet alongwith forwarding letter was sent to the Local Health Authority by the appellant by hand delivery through his peon. The endorsement under signature of Local health Authority acknowledging the receipt thereof was made on the forwarding letter.

The appellant received letter dated 20/5/1987 from the P.A. alongwith the report of analysis of Methidal . From the report it was learnt that the sample of Methidal did not conform to the standards prescribed under the Act as well as the P.F.A. Rules and the same was found to be adulterated. On receipt of the report from the Public Analyst, the appellant prepared the report containing all the relevant and important details. A copy of the said report was forwarded to the Local Health Authority alongwith other relevant papers for obtaining necessary consent u/S. 20 of the Act. The Local Health Authority after studying the relevant record, granted his consent in writing to the complainant for launching prosecution. The consent contained signature of the Local Health Authority. The said consent is on record at Exh.20. Complaint was lodged in the Court of the Ld. Judicial Magistrate First Class, Municipal Court at Baroda and oral intimation thereof was given to the Local Health Authority. The appellant thereafter despatched written notice intimating the fact regarding filing of complaint alongwith a copy of the Public Analyst report to the respondents as envisaged under the provisions of section 13(2) of the Act by registered A.D. post. The notice as well as report were

duly received by the respondents nos. 1 and 2 and the acknowledgement slips whereof bearing signatures of respondents nos. 1 and 2 have been produced by appellant on record at Exhs. 36 and 37.

3. In response to the summons issued by the Court, the respondents appeared before the Court. In their presence the examination-in-chief of the appellant was recorded. The respondents did not opt for cross-examination of the appellant before framing of the charge. On 3/5/1991 the case was adjourned for framing of the charge.

The charge was framed at Exh.34 and the respondents nos. 1 and 2 pleaded not guilty and claimed to be tried. After the completion of the cross-examination of the appellant, the prosecution did not offer any other witness for examination and the evidence of the prosecution was treated as closed. All the circumstances appearing against them in the case were put to respondents nos. 1 and 2 in their further statements recorded u/S. 313 of the Cr.P.C. However, no specific explanation was offered orally by either of the respondents. However, both the respondents submitted written submissions in addition to their further oral statement recorded u/S. 313 of the Cr.P.C. and in the said statements they submitted that they had not committed any offence, that the appellant was not authorized to collect the sample as he had not taken training for requisite period under the law, that the appellant had not followed the legal procedure while collecting the sample, that the appellant had not collected the sample after churning the entire stock lying in the utensil and hence, the sample was not a representative one, that under the Act or the Rules no standard is prescribed for Methidal and the sample was analysed by Public Analyst on the basis of Methi powder which was not legal; that the consent was not legally obtained; that the order of consent reveals that the consent was granted without application of mind as it did not contain any reason for which the same was being granted and that it was not stated whether it was in the public interest to grant the same; that the prosecution had not proved that the bottles in which sample was filled were empty, clean and moistureless bottles, that the offending food article was purchased by them from Aradhna Traders at Nadiad under written warranty and the said food article was stored and sold in the same manner in which it was purchased. Hence, they were entitled to have a defence of warranty and that they should be held to be innocent.

4. At the conclusion of the trial, the Ld. Magistrate vide judgment dated 9/5/1991 acquitted the respondents. In the opinion of the Ld. Magistrate the order of consent at Exh.20 was not legal in view of the judgment rendered by this Court in the case of Ramanbhai Prajapati v/s. State of Gujarat reported in 1990 Criminal Law Journal (Gujarat) at page 496. According to the Ld. Magistrate the consent did not reveal the details regarding legal provisions i.e. under which section and sub-section and rule and sub-rule of the Act as well as P.F.A. Rules the offence against the respondents is made out. Moreover, the said consent order also did not reveal whether Local Health Authority was satisfied that it was a fit case for launching prosecution and whether there was any prima-facie case against respondents nos. 1 and 2. Moreover, according to him, the consent order did not reveal that consent order was given by the Local Health Authority, who did not have any personal knowledge about the case, after having any personal discussion with the Food Inspector about the case. He has further observed that no details regarding the code no. and serial no. of the Local Health Authority was mentioned nor there was any mention made about sections 7 and 16 of the Act in the consent. According to the Ld. Magistrate, the order of consent clearly revealed that it was passed without application of mind and in support of his opinion the Ld. Magistrate strongly relied upon the aforesaid decision of this Court and on this sole ground the Ld. Magistrate came to the conclusion that the prosecution had not been able to prove the case against respondents nos. 1 and 2 beyond any reasonable doubt. He, therefore, acquitted them of the offences with which they were charges.

5. Mr. P.G. Desai, learned counsel appeared for the appellant, Mr. K.C. Shah, Ld. APP appeared on behalf of the State, whereas Mr. J.G. Shah, learned counsel appeared for respondents in this appeal. Mr. P.G. Desai submitted that the decision of the Ld. Magistrate was erroneous in as much as the law laid down by the aforesaid decision of this Court was no longer held to be good law in view of the judgment of the Supreme Court as well as this Court. In support of his contention, he placed reliance on a decision in the case of Gangadhar Y. Ramekar v/s. M.B. Shah reported in 1999 (2) G.L.R. p. 1105 and drew my attention to para. 9 of the said decision and submitted that in light of this decision the judgment and order of acquittal passed by the Ld. Magistrate were required to be set aside. Mr. J.G. Shah, learned counsel appearing for

respondents nos. 1 and 2 submitted that the judgment of the Ld. Magistrate was proper and as it was based on the case law prevailing then, it was not required to be disturbed by this Court.

6. In support of their respective contentions and to enable me to appreciate them afresh, the learned counsels took me through the entire record of the case including the evidence oral as well documentary.

7. The prosecution in support of its case placed reliance on the oral evidence of the appellant at Exh.4 and also certain documentary evidence in the form of written notice to respondent no. 2 expressing intention of the appellant to purchase sample of Methidal for the purpose of analysis at Exh. 11, the receipt given by respondent no. 2 at Exh.12 and the cash memo for the purchase of 600 grams. of Methidal by appellant at Exh.13, panchnama at Exh.14, letter of the P.A. acknowledging the receipt of sample at Exh.15, report of the Public Analyst at Exh.18, consent order at Exh.20, acknowledgement slips bearing signatures of respondent nos. 1 and 2 at Exhs. 26 and 31 respectively, etc. The report of Public Analyst reveals that the sample contained cold water soluble extract at 24.3% by Wt., whereas P.F.A. standard requires it to be not less than 30% by Wt. Moreover, microscopic examination revealed presence of Methi Husk in large amount. Thus, in the opinion of the Public Analyst the sample was adulterated as it did not conform to the standards prescribed under the Act as well as the P.F.A. Rules. The report is dated 28/5/1987. The appellant in his examination-in-chief stated what has been described in detail in para. 2 of this judgment and, therefore, the same is not repeated here. However, in the cross-examination on behalf of respondents nos. 1 and 2 he has stated that he was not graduate and that he had obtained training of Food Inspector for 45 days which otherwise was meant for 90 days. He further stated that he did not have any personal knowledge about the consent order. He further stated that consent order did not contain certain details like provisions of the Act under which the offence committed, the code no. and serial no. of the Local Health Authority and that the consent was given in public interest and that what type of adulteration was in the Methidal, etc. He also stated that the report of the Public Analyst did not reveal that the sample was harmful to the human life and that whether the adulteration was caused by mixing foreign substance in Methidal.

8. The prosecution did not examine any other witness in support of its case. This being an appeal against the order of acquittal, I have perused the entire record of the case and appreciated the prosecution evidence afresh. The evidence of appellant, Food Inspector, clearly reveals that he had meticulously followed the mandatory procedure prescribed under the Act and the Rules while collecting the sample of Methidal from respondent no.2, sealing the bottles containing sample, packing the bottles in the wrapper and despatching the sample to the Public Analyst as well as Local Health Authority. On that count the defence has not been able to point out any error on the part of the appellant. So far as adulteration is concerned, the report of Public Analyst at Exh.20 clearly reveals that in Methidal cold water soluble extract which should not have been less than 30% by Wt., was found to be 24.3% by Wt. Moreover, the microscopic examination showed that the presence of Methi husk in the sample was in large amount and in the opinion of the Public Analyst the sample of Methidal did not conform standard prescribed under the Act as well as under the P.F.A. Rules. The defence in cross-examination of the appellant has not been able to dislodge this fact nor has it chosen to get the sample analysed by the Director of Central Food Laboratory. The report of the Public Analyst therefore, becomes final and it proves that the food article in question viz. Methidal was adulterated. Respondents nos. 1 and 2 have not been able to prove their defence of warranty, as neither of them has come forward and entered the witness box, nor they have examined any other witness to prove their case of warranty nor they have produced any documentary evidence in support thereof. They are, therefore, not entitled to have protection u/S. 19 of the Act. Moreover, the fact that the appellant Food Inspector had undergone training for 45 days instead of 90 days also does not help the respondents as by now it is settled law that even if the Food Inspector has not undergone the requisite period of training, he is not debarred from discharging his duties as the Food Inspector and collecting samples for getting analysed by the Public Analyst. The question, therefore, requires to be dealt with in detail is whether the consent granted by the Local Health Authority to prosecute the respondents nos. 1 and 2 at Exh.20 is valid and legal consent. As stated above, the Ld. Magistrate in light of the decision rendered by this Court in the case of Ramanbhai Prajapati (supra) has found it to be not legal and has thereby concluded that the offence against respondents nos. 1 and 2 has not been proved beyond any reasonable doubt. However, in a later decision in the case of

Gangadhar Y. Ramekar v/s. M.B. Shah reported in 1999 (2) G.L.R. 1105 this Court relying on the decision of the Apex Court, has observed as under :-

"9. Considering the question of consent, as envisaged under Sec. 20 of the Act, the consent is produced at Exh. 48 on record of the trial Court. There is a specific averment that the consent was given after going through Analysis Report of the Public Analyst and other pertinent papers and documents, and the nature of the offence committed by the alleged offenders. It, therefore, cannot be said that the consent was given without application of mind. If the decision of the Hon'ble Supreme Court in the case of Suresh S. Rajpur v. Bhartiben P. Soni, 1996 (7) SCC 199 is seen, the same question was involved. In that case, the Hon'ble Supreme Court has reproduced the text of the consent letter in paragraph 6. If that is read in comparison to Ex. 48, it can be found that it is ad verbatim the same, except the name of the accused. In spite of the said consent letter, it has been observed that the said sanction was in accordance with law, although it was a cyclostyled one and, therefore, that question is now set at rest by the said decision and it is, therefore, hereby held that the verdict of the learned Magistrate that the sanction was not valid was in error."

The consent in this case in all particulars is the same as was in the case of Gangadhar Y. Ramekar v/s. M.B. Shah (supra). In light of this decision, it is crystal clear that the judgment and order of acquittal passed by the Ld. Magistrate are erroneous and deserve to be set aside and they are hereby set aside. Prosecution, therefore, has been successful to prove that respondents no. 1 and 2 were guilty of selling adulterated food article viz. Methidal and that they were responsible for committing offence u/S. 7 read with sec. 16 of the Act. Hence, I convict them for committing offence made punishable u/S. 7 read with section 16 of the Act.

9. Since I intend to impose minimum punishment, I need not summon respondents nos. 1 and 2 for hearing them on the question of sentence. The Ld. counsel for the respondents nos. 1 and 2 has been heard on the question of sentence and he has submitted that the offence is very old in as much as the sample in question

was collected way back on 5/5/1987, that the report of Public Analyst Exh.20 did not show any foreign substance, injurious to the health of human being having been mixed with Methidal for the purpose of adulteration and that respondents nos. 1 and 2 were petty traders and that they have stopped the business since long and if after lapse of about 14 years they are required to go to prison, not only they will suffer great hardship, but life of their family members would also become miserable. He has submitted that the offence is merely a technical one and, therefore, most lenient view should be taken while awarding sentence. It is true that the offence is merely a technical one and if the respondents are required to go to jail, it will cause not only immense hardship to them, but to their family members also. However, provisions of section 16 of the Act after the amendment introduced in the year 1976 make the sentence of imprisonment compulsory and the minimum punishment prescribed is six months. In view thereof, I have no other alternative but to impose on respondents nos. 1 and 2 sentence of six months' simple imprisonment and to pay fine of Rs.1,000/- each, in default further simple imprisonment for seven days.

10. However, considering the special features of the case that this is a merely a technical offence and 13 long years have already passed and all these times the respondents have suffered mental agony and torture, it will be in the fitness of things to give the benefit of provisions of clause (d) of Section 433 of the Cr.P.C. to the respondents. The provisions of Section 433 Clause (d) read as under :-

"The appropriate Government may, without the consent of the person, sentence, commute

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) a sentence of simple imprisonment or fine."

At this juncture it will not be out of place to refer to and rely on two judgments of the Apex Court.

Before the Apex Court similar situation had arisen and the Apex Court in the case of N. Sukumaran Nair v/s. Food Inspector, Mavelikara reported in 1995 Criminal Law Journal at page 3651 had extended the benefit of clause (d) of Section 433 of Cr. P.C. to the appellant of the said case in following manner :-

"The offence took place in the year 1984. The appellant has been awarded six months' simple imprisonment and has also been ordered to pay a fine of Rs.1,000/-. Under clause (d) of Section 433 of the Code of Criminal Procedure, 'the appropriate government' is empowered to commute the sentence of simple imprisonment for fine. We think that this would be an appropriate case for commutation of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial Court a sum of Rs.6,000/(sic) as fine in commutation of the sentence of six months' simple imprisonment within a period of six weeks from today and intimate to the appropriate government that such fine has been deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate orders under clause (d) of Section 433 of the Code of Criminal Procedure."

In the case of Santosh Kumar v/s. Municipal Corporation reported in 2000 Criminal Law Journal at page 2777 the Apex Court has again extended the benefit of clause (d) of Section 433 of Code of Criminal Procedure to the appellant of the said case and relying upon the decision rendered in N. Sukumaran Nair (supra) it has stated as under :-

"5. This case seems to be almost on a parallel with the facts enumerated in the decision cited above. We are also persuaded to extend the same benefit which the appellant in the aforesaid decision was granted by this Court, as this would be an appropriate case for commutation of sentence under Clause (d) of Section 433 of the Code of Criminal Procedure.

6. We, therefore, direct the appellant to deposit in the trial Court a sum of Rs. 10,000/- as fine in commutation of the sentence of 6 months imprisonment within a period of 6 weeks from today and intimate to the appropriate Government that such fine has been deposited. On deposit of the fine the State Government may formalise the matter by passing appropriate order under Clause (d) of Section 433 of the Code of Criminal Procedure. In the meanwhile the appellant will remain on bail."

Before the Delhi High Court also the same situation had arisen in the case of Rakeshkumar v/s. State reported in 2001 Criminal Law Journal at page 2978 and the Delhi High Court extended benefit under Clause (d) of Section 433 of the Cr. P.C. to the accused of that case.

11. I, therefore, direct respondents to deposit a sum of Rs.3,000/- each as fine in the trial Court in commutation of the sentence of six months' simple imprisonment within a period of two months from the date of this judgment and intimate to the appropriate Government alongwith certified copy of the judgment that such fine has been deposited. On deposit of such fine, the State Government may formalize the matter by passing appropriate order under Clause (d) of Section 433 of the Cr.P.C. Respondents nos. 1 and 2 to remain on bail till then.

With aforesaid direction, the impugned judgment is set aside and the present appeal is allowed.

[AKSHAY H. MEHTA, J.]

* Pansala.